Court Decisions Affecting the Negro - 1937

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By ATTY. SIDNEY A. JONES, JR., For A.N.P.

II. DECISIONS ON DISFRANCHISEMENT (Cont.)

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United States Supreme Court's Decisions On Disfranchisement

Finds It Difficult To Understand Justices' Ruling In Upholding Texas' Barriers To Free Use Of The Franchise

Efforts To Secure Ballot Often Lost In Highest Tribunal On Technicalities, Student Of Court's Record Declares

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(Continued from last week)

[EDITOR'S NOTE: This is the third of a series of articles prepared by a Chicago attorney on Supreme Court decisions affecting Negroes, mainly since the Civil War. In view of the present national interest and bitter debate on President Roosevelt's proposal to augment the nation's highest tribunal, this survey, containing facts known to very few Negroes, becomes unusual significance. We suggest you keep each article carefully and save them for reference.]

By ATTY. SIDNEY A. JONES, Jr.

II.—DECISIONS ON DISFRANCHISEMENT

It is interesting to note the Negro has always fought to secure the right to vote and to nullify the action of the Southern states in denying this right, but in many instances after waging a long fight to the supreme court of the state, in the United States District court and then to the Circuit Court of Appeals of the United States, and finally to the Supreme Court itself, he has been denied relief because of some technicality or because of some unusual construction on the act of Congress.

The Supreme Court, however, has nullified state action in some instances which attempted directly or indirectly to defeat the purpose of the Fifteenth amendment. In 1910 an amendment was passed to the Oklahoma constitution requiring voters to be able to read and write any section of the state constitution, but excepting therefrom persons who prior to January 1, 1866, were entitled to vote under any form of government, or who on that date resided in a foreign nation or who were lineal descendants of such persons. Inasmuch as the Fifteenth Amendment was not proclaimed until March 30, 1870, it is obvious that this above clause of the constitution would exclude all whites from the reading and writing requirement, but would include all Negroes.

This part of the constitution was upheld by the Oklahoma supreme court, but in 1915 in the case of Guinn v. United States, the "grandfather clause" was declared unconstitutional as a violation of the Fifteenth Amendment in that it is a denial or abridgment of the right to vote on account of race, color and previous condition of servitude.

This case is a great milestone in the fight of Negroes against the Southern states' denial of the right to vote by the laws which on their faces do not appear to strike at the Negro, but which in effect do so.

Efforts to disfranchise the Negro based on such things as the "grandfather clause" of Oklahoma and requirement of literacy tests and property ownership and the like have been largely nullified either by the Supreme Court decision or the efforts of Negroes themselves to qualify.

Democratic White Primary

The Southern states are now using very effectively the so-called White Primary to prevent Negroes from participating in the Democratic primaries of the Southern states, and inasmuch as the primary is the important thing, this amounts to a practically complete denial of the right to vote.

The first decision dealing with the legality of the Democratic white primary was rendered by the Supreme Court in 1927 in the case of Nixon v. Herndon. L. A. Nixon brought suit in the United States District court of Texas against Herndon and another judge of elections for denying him the right to vote in a Democratic primary at El Paso in 1924. The denial was based upon the Texas statute enacted in 1923 which provided, among other things, "In no event shall a Negro be eligible to participate in a Democratic Party Primary Election held in the state of Texas."

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Texas Democrats were not to be outdone, however. The statute was amended and provided that every political party in that state through the State Executive Committee, could have the power to prescribe the qualifications of its own members and should in its own way determine who shall be qualified to vote or otherwise participate in such party. Pursuant to this statute the Democratic State Executive committee passed a resolution that only white persons could participate in the Democratic Primaries. The white Democrats of Texas contended, and in the case of Grisby v. Harris, the United States District Court in Texas declared that this act of the Executive committee was not a violation of any right granted by the United States constitution.

The colored voter, however, contended that the state had delegated control of the political parties to the Executive Committee of the Democratic party, and hence was a party to the discrimination, and therefore violating the Fourteenth and Fifteenth amendments. Colored Democrats appealed to the U. S. Supreme Court and on May 1, 1932, the Supreme Court held in the case of Nixon vs. Condon that the Democratic State Executive Committee could not bar Negroes, but the Supreme Court did suggest a way that Negroes could be barred by stating that the power resided in the State Democratic convention, if at all.

After this the Texas Democratic State convention voted to bar Negroes from its party. Of course the Supreme Court of Texas upheld this decision and also the Supreme Court of the United States upheld it in 1935 in Grovey vs Townsend, so that after these many years of fighting by the Negroes of Texas in an effort to participate in the Democratic Primary, the Negro is just where he started.

United States Supreme Court's Decisions On Disfranchisement

Finds It Difficult To Understand Justices' Ruling In Upholding Texas' Barriers To Free Use Of The Franchise

Efforts To Secure Ballot Often Lost In Highest Tribunal On Technicalities, Student Of Court's Record Declares

By ATTY. SIDNEY A. JONES, JR. (For A. N. P.)

EDITOR'S NOTE:—This is the second of a series of articles prepared by Atty. Sidney A. Jones, Jr., of Chicago on Supreme Court decisions affecting Negroes. The third article in this group will deal with high court decisions on "Civil Rights and Segregation."

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DISFRANCHISING NEGROES

The chief method of the Southern states in disfranchising Negroes has been very effective, and has even met the approval of the United States Supreme Court. This method consists in excluding those from voting who do not pay poll taxes, who have been convicted of certain crimes, or who can not read and interpret the state constitution.

The only prohibition of the federal constitution to the states concerning voting is that no state shall deny to any person the right to vote because of race or sex. The constitution adopted as the qualifications of voting for federal officers those qualifications laid down by each state for voting as passed by the lower or most numerous branch of the state legislature.

The Mississippi suffrage law is typical of those passed with the express intention of depriving Negroes of the ballot. In discussing this law the supreme court of Mississippi said: "Within the field of permissable action under the limitations imposed by the federal constitution, the convention swept the field of expedients, to obstruct the exercise of suffrage by the Negro race. Restrained by the federal constitution from discriminating against the Negro race, the convention discriminates against his characteristics, and the offense to which its criminal members are prone."

The U. S. Supreme Court decided in 1898, in the case of Williams versus Mississippi, that no relief could be granted Negroes under the operation of this law, even though it was shown that it conferred a discretion on the election judges readily susceptiable to abuse in that it allowed the registration board to pass on the ability of electors to interpret the state constitution. The court held that it was "not actually shown" that there was actual discrimination in the administration of the law.

AMENDMENT ONLY RELIEF

The only relief for the Negro from these laws is a constitutional amendment providing certain definite and impartial qualifications for voting.

The Supreme Court also decided that the Democratic party of Texas, through its state convention could exclude Negroes from participating in Democratic primaries on the same day that it handed down the last decision reversing the conviction of the Scottsobro boy.

Most Negroes were so jubilant over the fact that the Supreme Court had again prevented the state of Alabama from legally lynching an innocent Negro boy that they, to a very large extent, ignored the Texas primary decision. It seems to me the Negro race as a whole was harmed more by the Texas Primary decision than it was benefited by the Scottsboro decision, because if the Negroes were given the right to vote in the South there would be no such things as Scottsboro cases.

In a state where selection in the primary is usually tantamount to actual election, the privilege to vote in the primary seems to be so connected with the election of state officials that any exclusion of Negroes from the primaries should be considered state action.

As a matter of fact, the Texas legislature had so surrounded the primary election with restrictions as to cause the Texas supreme court to say in 1906 that "the legislature has assumed control of that subject to the exclusion of party action." It is difficult to understand this latest decision of the U. S. Supreme Court upholding the action of the Democratic State convention, when in 1932 in the case of Nixon versus Herndon the Supreme Court held that it was unconstitutional to delegate to the executive committee the power to exclude Negroes.

Court Decisions, Affecting the Negro - 1937

The SUPREME COURT

Afro-American 3-27-37

PRO CON

By S. H. JONES, JR., Attorney

(For ANP)

In 1875, the case of United States vs. Reese involving the Fifteenth Amendment came before the Supreme Court. There had been an indictment against election inspectors for refusal to receive and count the vote of a colored citizen at a municipal election in Kentucky.

The Court held that the section of the Amendment relating to inspectors of elections omitted all reference to race and color, and, therefore, the indictment could not be sustained. This was the first case brought to the Supreme Court by a colored person in order to enforce the Act of Congress passed pursuant to the Fifteenth Amendment and the Supreme Court held against the colored person on a very narrow technicality.

The court held that the Act, not being confined to unlawful discrimination on account of race, color, or previous condition of servitude, was beyond the limit of the Fifteenth Amendment.

The Amendment gave Congress the right to protect citizens from the denial of the right to vote on account of race, color, or previous condition of servitude, and the Supreme Court held that Congress had attempted to protect all citizens in the right to vote, and hence an indictment of election officials for refusing a colored person the right to vote could not be sustained.

This illustrates the technical manner in which the Supreme Court has repeatedly defeated the efforts of colored citizens to secure the full protection intended for them by the Constitution.

Lost on Technicality

Again in 1875, the Supreme Court in the U.S. vs. Cruickshank denied to colored citizens the full benefit of the Enforcement Act. This case dealt with an indictment consisting of thirty-two counts for conspiracy under the Sixth Section of this Act. The defendants were charged with banding together with the intent to feloniously injure, oppress, threaten, and intimidate two citizens of African descent and to hinder or prevent them to peacefully assemble, bear arms, vote, and to deprive them of their lives and liberty without due process of law.

The Enforcement Act specifically prohibited such things.

The defendants were convicted in the lower courts, but the Supreme Court reversed the convictions on the technicality that the indictments, although they stated that the injured persons were persons of African descent, did not allege that the wrongs done against them were on account of their race or color.

The court held further that the ability of a Government to offer protection is limited by the power it possesses for that purpose, and that the citizens must look to the States and not to the Federal Government for their protection and enjoyment of the rights alleged to have been violated in this case.

First Favorable Decision

The court, however, did in 1884, in the case of Ex Parte Yarbrough, uphold a section of a Federal Reconstruction Statute which sought to protect the colored man's right to vote. Several persons were convicted in the Federal Circuit Court in the northern district of Georgia for conspiracy to intimidate a colored person from voting for members of Congress in violation of a Federal statute.

Those convicted filed a petition for a writ of habeas corpus seeking their release on the ground that Congress had no power to pass a Federal law preventing such an offense. The Supreme Court denied the petition and held that Congress has the right to protect citizens in their right to vote.

Rulings on Franchise

The colored citizen has always fought for the right to vote and to nullify the action of the southern States in denying this right. But often after waging a long fight to the State supreme court in the U.S. District court, then to the U.S. Circuit Court of Appeals and finally to the Supreme Court, he has been denied relief because of some technicality or because of some unusual construction of the act of Congress.

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Other Methods of Disfranchising

The chief method of the South used in disfranchising colored citizens effectively, which has even met the approval of the U.S. Supreme Court, consists in excluding those from voting who do not pay poll taxes, who have been convicted of certain crimes, or who can not read and interpret the State constitution.

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"Within the field of permissible action under the limitations imposed by the Federal constitution, the convention swept the field of expedients, to obstruct the exercise of suffrage by the colored race. Restrained by the Federal constitution from discriminating against the colored race, the convention discriminates against his characteristics, and the offense to which its criminal members are prone."

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The only relief for the colored citizen from these laws is a constitutional amendment providing certain definite and impartial qualifications for voting.

SUPREME COURT HAS PREVENTED MUCH MISTREATMENT OF RACE IN THE SOUTH

But Justices Have Never Saved Negro From An Act of Congress Aimed At Denying Him Any Rights, Lawyer Finds

By ATTY. SIDNEY A. JONES, JR.

PEONAGE was given a severe blow by the Supreme Court in the case of Bailey vs. Alabama decided in 1911 (219 U. S. 219). The Court for the first time gave real effect to the Thirteenth amendment by holding the Alabama peonage law invalid. This law attempted to make the violation of a contract for personal services a penal offense.

The court held that a state cannot compel one man to labor for another in payment of a debt by punishing him as a criminal if he dose not perform the services or pay the debt. The state of Alabama later tried to evade an act of Congress prohibiting slavery, but was prevented by the Supreme Court in United States vs. Reynolds in 1914 (235 U. S. 133).

HALTED TREATMENT

Practically all cases where the Negro has been helped by the Supreme Court arose from discriminations against him by some of the Southern states. The Supreme Court has prevented much mistreatment of the Negro by the Southern states, but it has also sanctioned much discrimination, including separate schools, jim crow laws, disfranchisement by white primaries and other methods.

The Supreme Court has never saved the Negro from an act of Congress aimed at denying him any rights. On the other hand the Supreme Court has in six decided cases declared acts of Congress unconstitutional which had as their sole purpose the protection of Negroes' rights, privileges and immunities.

ON NEGRO EDUCATION

All of the Southern states by law require separate schools for white and colored people. As a result of this segregation the colored schools are vastly inferior to the white schools and in some cases there are no colored schools at all

In some communities there are high schools for whites and none for Negroes, and no Southern state provides provides professional education for Negroes, such as law, medicine, dentistry, pharmacy and the like, nor does any Southern state provide facilities for Negroes to earn degrees in graduate study. But the Negroes have not yet willingly submitted to this rank discrimination. They have fought up to the Supreme Court of the United States, but they have received no relief.

A typical example of how Southern states discriminate against Negroes in the matter of education, taxing Negroes to support all schools, and then giving them unequal facilities, is brought out in a case decided by the Supreme Court in 1889, Cummings vs. Board of Education. In this case an elementary school for Negroes was provided by a Georgia city, whereas it provided an elementary and high school for the whites.

FILE INJUNCTION

Certain Negroes filed a petition to enjoin the tax board from collecting a tax for the high school, on the ground that these was no high school for Negroes and therefore there should be no taxes collected for a white high school. When the case reached the U. S. Supreme Court it was held that the relief asked for would be granted.

The board of education justified its refusal to provide a Negro high school on the ground that there were only 60 Negroes who wanted to attend high school, and that if they provided a Negro high school, they would have to close the elementary school which accommodated 300 children.

The Supreme Court refused to grant the relief prayed for because it either would impair the efficiency of the high school provided for white children or compel the board to close it, and if that were done, the result would be to take from the white children educational facilities belonging to them, without giving to colored children additional opportunities for the education furnished in high schools.

COURT'S RULING

The Court said, however, that if in some appropriate proceeding Negroes had sought directly to compel the board of education out of the funds in its hands, or under its control, to establish and maintain a high school for colored children, "and if it appeared that the board's refusal to maintain such a school was in fact an abuse of its discretion, and in hostility to the colored population because of their race, different questions might have arisen."

In 1927 in the case of Gong Lum vs. Rice, the Supreme Court decided that a child of Chinese blood, born in and a citizen of the United States, is not denied the equal protection of the laws by being classed by the state of Mississippi among the colored races who are assigned to public schools separate from those assigned to whites, when equal facilities for education are afforded both classes.

The Supreme Court has also upheld the right of a state to prohibit a private school from educating white and colored children together. This was decided in the case of Berea College vs. Commonwealth, in 1908. The college, a private corporation of Kentucky, was indicted and charged that it did permit and receive both white and Negro races as pupils for instruction in said college contrary to an act of Kentucky of March 22, 1904, entitled "An Act to Prohibit White and Colored Persons from attending the same school."

FINED $1,000

The college was found guilty and sentenced to pay a fine of $1,000. The Supreme Court held that the statute was valid as to corporations, although if it involved an individual it may be in conflict with the federal constitution in denying to individuals powers which they might rightfully exercise. Yet, the Supreme Court had previously held in many cases that the term "person" in the Fourteenth amendment applies to corporations as well as to individuals, but it did not follow that rule in this case.

The charter granted to the college in 1899, five years before the passage of the state statute, provided: "Its object is the education of all persons who may attend its institutions of learning at Berea, and, in the language of the original articles to promote the cause of Christ."

Justice Harlan, who had always been a friend of the Negro while on the Court, handed down a vigorous decision dissenting opinion condemning the Kentucky law. He said:

RAPS DECISION

"The capacity to impart instruction to others is given by the Almighty for beneficent purposes; and its use may not be forbidden or interfered with by Government—certainly not, unless instruction is, in its nature, harmful to public morals or imperils the public safety. The right to impart instruction, harmless in itself or beneficial to those who receive it, is a substantial right of property, especially where the services are for compensation.

"But even if such right be not strictly a property right, it is, beyond question, part of one's liberty guaranteed against hostile State action by the Constitution of the United States. This Court has more than once said that the liberty guaranteed by the Fourteenth Amendment embraces 'the right of the citizen tobe free in the enjoyment of all his faculties,' and 'to be free to use them in all lawful ways'." .. ..

Justice Harlan further pointed out that if a state could forbid the teaching of two races together it could prevent their worshipping together, or meeting together politically or even shopping at the same time in the same store.

The Supreme Court put an end to the attempt of Southern cities and states to assign Negroes to the ghettoes by declaring unconstitutional an ordinance of the city of Louisville. This was decided in 1917, in the case of Buchanon vs. Warley.

A Negro had agreed to buy a lot from a white man.

The lot was located in a block where there were eight residences occupied by whites, and only two by colored. The ordinance prevented the occupancy of a Negro on a lot in the city in any block where the greater number of residences are occupied by whites.

The Supreme Court declared that the city ordinance was unconstitutional and violated the Fourteenth amendment. Property includes the right to use, and dispose of it, and the occupancy and sale of property cannot be inhibited by the states or any of their municipalities solely because of the color of the proposed occupant, said the court.

Even the Supreme Court of Georgia in the case of Carey vs. Atlanta (143 Ga. 192) held a similar racial segregation ordinance invalid.

UPHOLD D. C. LAW

The Supreme Court however has upheld the right of property owners in the District of Columbia to make valid agreements to the effect that no property owned by them should be sold, occupied, leased, or given to any Negro. The owners make mutual covenants with each other and the covenants run with the land, so that any person securing the land from one of the contracting parties, will take it subject to this burden or restriction against selling, giving, or leasing it to Negroes.

One of the parties to this covenant agreed to sell land included in the covenant to a Negro, and one of the other parties to the covenant brought a suit to enjoin the conveyance. The injunction was granted and the matter affirmed by the Court of Appeals of the District of Columbia. On appeal to the U. S. Supreme Court the case was dismissed on the ground that no constitutional question was raised.

The Court said that neither of the amendments to the constitution prohibited private individuals from entering into cotracts respecting the control and disposition of their own property.

(THE END)

Court Decisions, Affecting the Negro-1937.

The Supreme Court

What It Has Done On Colored Cases

EDITOR'S NOTE: This is the first of a series of articles, prepared by a Chicago attorney, on Supreme Court decisions affecting Negroes, mainly since the Civil War. In view of the present national interest and bitter debate on President Roosevelt's proposal to augment the nation's highest tribunal, this survey, containing facts known to very few Negroes, assumes unusual significance. We suggest you read each article carefully and save them for reference.

By Attorney Sidney A. Jones, Jr., For ANP

1. SUPREME COURT DECISIONS ON DISFRANCHISEMENT.

These articles will merely point out the holdings of the Supreme Court in various matters concerning the Negro touching on the right to vote; the right to serve on juries; the right not to be deprived of life, liberty and property without due process of law; civil rights; jim crow laws; segregated districts, peonage and also separate educational facilities. It will appear from these articles that the Supreme court has been a blessing and also a bane to the Negro, and it is especially true that the Supreme court during Reconstruction Days to a very large extent, nullified the acts of the Reconstruction Congress which intended to give full rights to Negroes throughout the length and breadth of the United States.

15th AMENDMENT

The Fifteenth Amendment to the Constitution provided as follows:

Section One. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude. Section Two. The Congress shall have power to enforce this article by appropriate legislation."

In order to enforce the Fifteenth Amendment, Congress passed the Enforcement Act on May 31, 1870, for the purpose of enforcing the right of citizens of the United States to vote in the several states of the Union, and for other purposes and provided a penalty against any person or election official for refusing to allow a Negro to register or vote, and the Act also provided a penalty against any individaul who "by force, bribery, threats, intimidation or other unlawful means shall hinder, delay, prevent or obstruct or shall combine or shall confederate with others to hinder, delay, prevent or obstruct any citizen from doing any act required to be done to qualify him to vote or from voting at any election, as aforesaid, such person shall for every such offense forfeit and pay the sum of $500 to every person agrieved thereby, and shall also for every such offense be deemed guilty of a misdemeanor and shall on conviction thereof be fined not less than $500 or be imprisoned for not less than one month and not more than one year or both at the discretion of the Court."

LOSE FIRST CASE

In 1875 the case of United States v. Reese involving this statute came before the Supreme Court. There had been an indictment against election inspector for refusal to receive and count the vote of a Negro at a municipal election in Kentucky. The Supeme court held that the section of the statute relating to inspectors of elections omitted all reference to race and colo, and therefore the indictment could not be sustained against the election officials. This was the first case brought to the Supreme Court by a Negro in order to enforce the Act of Congress passed pursuant to the Fifteenth Amendment and the Supreme Court held against the Negro on a very narrow technicality.

The court held that the Act of Congress, not being confined to unlawful discrimination on account of race, color or previous condition of servitude, was beyond the limit of the Fifteenth Amendment. The Fifteenth Amendment gave Congress the right to protect citizens from the denial of the right to vote on account of race, color or previous condition of servitude, and the Supreme Court held that Congress attempted to protect ALL citizens in the right to vote, and hence an indictment of election officials for refusing a Negro the right to vote could not be sustained.

This is illustrative of the technical manner in which the Supreme Court time and time again defeated the efforts of the Negro to secure the full protection intended for him by the Constitution.

ANOTHER LOSS ON TECHNICALITY

Again in 1875 the Supreme Court in United States v. Cruickshank denied to the Negro the full benefit of the Enforcement Act. This case dealt with an indictment consisting of 32 counts for conspiracy under the Sixth Section of this Act. The defendants were charged with banding together with the intent unlawfully and feloniously to injure, oppress, threaten and intimidate two citizens of the United States of African descent and persons of color with the unlawful and felonious intent thereby to hinder, and prevent them to peacefully assemble, to bear arms, to vote, and to deprive them of their lives and liberty without due process of law The Enforcement Act specifically prohibited such things.

The defendants were convicted in the lower courts, but the Supreme Court reversed the convictions on the technicality that the indictments, although they stated that the injured persons were persons of color and of African descent, did not allege that the wrongs done against them were on account of their race or color. The court held further that the ability of a government to offer protection is limited by the power it possesses for that purpose, and that the citizens must look to the states and not to the federal government for their protection and enjoyment of the rights alleged to have been violated in this case, and that since the Fourteenth Amendment prohibits state action and not individual action, the federal government could not punish purely individual action in this case.

FIRST FAVORABLE DECISION

The Supreme Court, however, did in 1894 in the case of Ex Parte Yarbrough uphold a section of a Federal Reconstruction Statute which sought to protect the Negro's right to vote. Several persons were convicted in the Federal Circuit court in the Northern District of Georgia for conspiracy to intimidate a colored person from voting for members of Congress in violation of a federal statute. The convicted persons filed a petition for a Writ of Habeas Corpus seeking their release on the ground that Congress had no power to pass a federal law preventing such an offense. The Supreme Court denied the petition and held that Congress has the right to protect citizens in their right to vote.

In 1900 in the case of Willey v. Sinkler, the Supreme Court had to decide a case brought up from South Carolina where a colored resident of Charleston had brought suit against the board of managers of a general election to recover damages in the sum of $2,500 for wrongfully and wilfully rejecting his vote for a member of the House of Representatives of the United States for the State of South Carolina on November 6, 1894. Again a colored citizen was deprived of his right to vote on a technical question of pleading. The Supreme Court threw out the case on the ground that although the plaintiff alleged that he was a duly qualified elector he did not allege that he was registered. The Supreme Court held that since the South Carolina Constitution and Statute make it necessary to be registered in order to vote, the failure to make this allegation was fatal. It seems that any intelligent person would understand that an allegation that a person was a duly qualified elector and was entitled to vote would make unnecessary the allegation that he was duly registered.

WINS CASE BUT NO RELIEF

Another decision of the Supreme Court in 1902 upheld the right of a Negro, but denied him any remedy. This was the case of Giles V. Harris begun in the District Court of Alabama to compel the Board of Registrars of Montgomery County to enroll a Negro on the voting list. The bill was brought on behalf of the plaintiff and 5,000 other Negroes of the county similarly situated and circumscribed. The plaintiff applied in March, 1902 for registration as a voter and was refused arbitrarily on account of his color, while all white men were allowed to register. This was done all over the State. Under Section 187 of Article 8 of the Alabama Constitution persons registered before January 1, 1903, remained electors for life, while after that date severe tests came into play which would include perhaps a large part of the black race. This refusal to register the Negroes was part of a general scheme to disfranchise them.

After January 1, 1903, the only persons in Alabama who could register were those who could read and write any article of the Constitution of the United States and owners or husbands of owners of forty acres of land in the state in which they reside and owners of $300 worth of personal property. The suit was brought under an act of Congress which provided that every person who under cover of a state statute, ordinance, regulation, custom, or usage, subjects or causes to be subjected any citizen of the United States to the deprivation of any rights or privileges secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress. The Supreme Court held in an opinion written by Justice Holmes that although the lower court had jurisdiction of the subject matter, the court was justified in not requiring election officials to act under the illegal provisions of the Alabama Constitution, and the Court also held that it would have no way of enforcing its decree and that a court after was not beyond the illegal the Supreme Court specifically recognized the illegality of the constitutional registration Constitutional provision, but at the same time denied any redress to the Negro.

Supreme Court's Record On Disfranchisement Reviewed

Series of Articles Begun On What the Nation's Highest Tribunal Has Done On Various Cases Involving The Negro

(EDITOR'S NOTE: This is the first of a series of articles, prepared by an able Chicago attorney, on Supreme Court decisions affecting Negroes, mainly since the Civil War. In view of the present national interest and bitter debate on President's Roosevelt's proposal to augment the nation's highest tribunal, this survey, containing facts known to very few Negroes, assumes unusual significance. We suggest you read each article carefully and save them for reference.)

Journal and Guide
3-13-37

By SIDNEY A. JONES, JR.
(For Associated Negro Press)

Norfolk Va.

These articles will merely point out the holdings of the Supreme Court in various matters concerning the Negro touching on the right to vote, the right to serve on juries, the right not to be deprived of life, liberty, and property without due process of law, civil rights; jim crow laws, segregated districts, peonage, and also separate educational facilities.

It will appear from these articles that the Supreme Court has been a blessing and also a bane to the Negro, and it is especially true that the Supreme Court during Reconstruction Days, to a very large extent, nullified the acts of the Reconstruction period Congress which intended to give full rights to Negroes throughout the length and breadth of the United States.

15TH AMENDMENT AND ITS ENFORCING ACTS

The Fifteenth Amendment to the Constitution provides as follows "Section One. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude. Section Two. The Congress shall have power to enforce this article by appropriate legislation.

In order to enforce the Fifteenth Amendment, Congress passed the Enforcement Act on May 31, 1870, for the purpose of enforcing the right of citizens of the United States to vote in the several states of the Union, and for other purposes and providing a penalty against any person or election official for refusing to allow a Negro to register or vote, and the act also provided a penalty against any individual who "by force, bribery, threats, intimidation or other unlawful means shall hinder, delay, prevent or obstruct or shall combine or shall confederate with others to hinder, delay, prevent or obstruct any citizen from doing any act required to be done to qualify him to vote or from voting at any election, as aforesaid, such person shall for every such offense forfeit and pay the sum of $500 to every person agrieved thereby, and shall also for every such offense be deemed guilty of a misdemeanor and shall on conviction thereof be fined not less than $500 or be imprisoned for not less than one month and not more than one year or both at the discretion of the Court."

LOSE FIRST CASE INVOLVING ENFORCEMENT ACT

In 1875 the case of United States v. Reese involving this statute came before the Supreme Court. There had been an indictment against election inspectors for refusal to receive and count the vote of a Negro at a municipal election in Kentucky.

The Supreme Court held that the section of the statute relating to inspectors of elections omitted all reference to race and color, and therefore the indictment could not be sustained against the election officials.

This was the first case brought to the Supreme Court by a Negro in order to enforce the Act of Congress passed pursuant to the Fifteenth Amendment and the Supreme Court held against the Negro on a very narrow technicality.

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The Fifteenth Amendment gave Congress the right to protect citizens from the denial of the right to vote on account of race, color or previous condition of servitude, and the Supreme Court held that Congress had attempted to protect all citizens in the right to vote, and hence an indictment of election officials for refusing a Negro the right to vote could not be sustained.

This is illustrative of the technical manner in which the Supreme Court time and time again defeated the efforts of the Negro to secure the full protection intended for him by the Constitution.

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The defendants were convicted in the lower courts, but the Supreme Court reversed the convictions on the technicality that the indictments, although they stated that the injured persons were persons of African descent, did not allege that the wrongs done against them were on account of their race or color.

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Court Decisions, Affecting the Negro – 1937

SUPREME COURT AND THE NEGRO

Legislators Sought to Assist Newly Freed Negroes After Civil War and Passed Many Laws Toward This End

Sidney A. Jones, Jr.

writer of this series of articles on the Supreme Court and the Negro, of which this is the third, is a well-known Chicago attorney. In view of the present national interest and bitter debate on President Roosevelt's proposal to augment the nation's highest tribunal, this survey, written for the Associated Negro Press and The Amsterdam News, and containing facts known to very few people, assumes unusual significance.

(Continued from Last Week.)

III.—Civil Rights and Segregation

CONGRESS, immediately after the Civil War, desired to give full protection to former slaves in every state and the steps taken for this purpose were the Thirteenth Amendment, in force in 1865; the Fourteenth Amendment, in force in 1868, and the Fifteenth Amendment, in force in 1870, and the various statutes passed to enforce the amendments, which were as follows: the Civil Rights or Enforcement Acts of April 9, 1866, the Civil Rights or Enforcement Act of May 31, 1870, the Act of February 28, 1871, the Ku Klux Act of April 20, 1871, and the Civil Rights Act of March 1, 1875.

Within a year after the Civil Rights Act of 1875 was passed which directly penalized and punished discrimination against the Negro in all places of public accommodation, such as conveyances, hotels and amusement centers, two cases were decided by the Court, which completely destroyed the plan of the Reconstruction Congress of protecting the Negro's rights by direct federal action.

In 1876, the Supreme Court in United States v. Reese held unconstitutional Section three and four of the Civil Rights or Enforcement Act which penalized inspectors in state elections for refusing to receive and count votes and for obstructing any citizen from voting. The Court held that the Fifteenth Amendment only gave Congress the right to prevent discrimination on account of race, color or previous condition of servitude, and that the statute in question was not confined to such a limited class of discriminations, but extended broadly to all discriminations, and so construed it unconstitutional and an interference of the rights of the states.

Slaughter House case, which strangely enough had no connection with the Negro question at all, but involved the legality of a monopoly of the slaughtering business which the Louisiana legislature had given to one business. The other slaughter houses sought to break the monopoly on the ground that by giving all of the business to one concern the state was depriving them of their property, that is, the right to engage in the slaughtering business, without due process of law, contrary to the Fourteenth Amendment.

The Court in its opinion went into a long discussion of the history of the Fourteenth Amendment, the evil which it was destined to remedy and its pervading spirit, and finally held that the Louisiana statute did not violate the amendment; that if the right claimed by the plaintiff to be freed of a monopoly existed at all, it was not a privilege or immunity of a **citizen of the United States** as distinguished from a **citizen of a state**, and finally the Court held that it was only the rights which owed their existence to the federal government, its constitution or laws that were placed under the special care of the national government.

Thus, it will be seen that the Court was very anxious to preserve to the South the right to deal with the Negro question. This decision, although it did not directly involve the Negro, nevertheless, in so far as it concerned the provision of the Fourteenth Amendment forbidding the state to abridge he privileges and immunities of a citizen, rendered that clause practically a nullity. The intent of the Reconstruction Congress in framing the language of the Fourteenth Amendment was directly contrary to the construction placed upon it by the Court.

The framers of this amendment not only desired to punish the South and elevate the Negro to the place of equality with the white man, but they also intended to place in the hands of the federal government powers to deal with this question heretofore exercised by the states.

It was well known that subsequent to the Thirteenth Amendment much legislation was passed in the South for the purpose of keeping the Negro in subjection, and federal action was necessary in order to protect the Negro's Rights, yet in the very first attempt to enforce the first clause of the Fourteenth Amendment the Supreme Court in this Slaughter House case by a decision of five to four defeated this attempt and differed both in respect to the intention of the framers and the construction of the language used by them.

Turned to State

Again in 1875 the Supreme Court in the case of United States v. Cruchshank made it clear that the Negro must look to the states for the protection of his civil rights and not to the federal government. This case was based on indictments against individuals under one of the Reconstruction statutes which prohibited any person to injure, oppress, threaten or intimidate any citizen with intent to prevent or hinder the free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States. The defendants in this case were charged with fraud and violations against Negroes in the Louisiana State Elections.

The Court held that the rights which the Negroes claimed were violated and which Congress had sought to protect, such as the right to peaceably assemble, to petition for redress, to bear arms and to vote, were not the rights which citizens enjoyed by virtue of the Constitution of the United States, and hence the actions set forth in the indictment did not come within the scope of the constitution. Because the indictments did not allege discrimination on account of race, color or previous condition of servitude, they could not be upheld. The Court said: "We may suspect that the race was the cause of the hostility, but it is not so averred."

It can be seen that for all practical purposes these decisions left the federal statutes almost wholly ineffective to protect the Negro. This was exactly what the Supreme Court desired as it was not at that time in sympathy with the Reconstruction Congress. This emasculation of the amendments and the federal statute passed to enforce them by the court, plus the lack of protection furnished Negroes by the Southern States and the very limited number of rights which the Court considered the federal government could protect, left the Negro in almost as bad a condition in the South as he was before the amendments for his benefit were passed. Of course, in 1877 when President Hayes withdrew the United States army from the South, all efforts to enforce the Reconstruction Acts came to an end.

Negro Pushed Fight

But the Negro himself kept up the effort to make the Reconstruction statutes effective, but in 1883 the Supreme Court handed down two decisions which nullified the efforts of Congress to protect him. One of these cases was United States vs. Harris, which involved the constitutionality of Section Two of the Ku Klux Act of April 20, 1871, making it criminal for two or more persons to conspire or go in disguise upon the highway or upon another's premises for the purpose of depriving any person of equal protections of the laws.

The Court held the section unconstitutional and unwarranted by any provision of any of the amendments and held that the amendments, although they gave Congress the power to enforce their provisions, did not authorize Congress to legislate directly as to the acts of private persons.

In the famous Civil Rights cases of the same year, the Civil Rights Act of Mar. 1, 1875, was held unconstitutional. Congress had by this statute made it a crime for any person to deny full and equal enjoyment of the accommodation of public conveyances, places of public amusement and the the like to Negroes.

The Supreme Court again held that the amendments gave Congress no power to prevent state action. It is interesting to note that in all of these decisions the judges who were in sympathy with the Reconstruction program attempted to uphold all of the acts of Congress but were hindered by the judges who wished to maintain the status quo.

Quashed Civil Rights

The Supreme Court was also called upon during the Reconstruction period to pass upon action in the states dealing with Civil Rights for Negroes and almost invariably the decisions were against the Negro even if the Supreme Court in some instances had to reverse itself. In 1869, the Reconstruction government of Louisiana passed a statute which provided that all persons engaged within the state in the business of common carriers of passengers should give equal rights without regard to race or color in the accommodation of railroads, street cars, steam boats, stage coaches and all other vehicles.

In this case a colored woman sued the owner of a boat because she was not allowed to go into a cabin set aside for whites. The plaintiff had bought transportation from one point to another within the state. She recovered a judgement for $1,000, which was sustained by the Supreme Court of Louisiana. The owner of the boat appealed to the Supreme Court of the United States and there this Louisiana Civil Rights Act was pronounced unconstitutional on the ground that it related to commerce within the states and that only Congress had the right to regulate such commerce.

The Court said, "If the public good requires such legislation it must come from Congress and not from the states." But in spite of the fact that the Court made this statement in 1877, in the Louisiana Civil Rights case, in 1883 the Court held specifically that it was unconstitutional even for Congress to do that specific thing.

Mississippi Supreme Court Acquits Killer

Amsterdam News 4-3-37

JACKSON, Miss., Mar. 31. (ANP).—In one of the few decisions of its kind ever rendered in the South, the state supreme court Monday freed Milton Jarman, tenant farmer, who had been convicted by a lower court and sentenced to life imprisonment for killing a white plantation overseer.

New York, N.Y.

Jarman was charged with the murder, in December, 1935, of H. F. Woodruff. He was convicted the following March, although he said the killing was in self-defense when the white man beat and shot at him as the tenant attempted to move off the plantation.

The supreme court said that, from the evidence, the lower court should have directed the jury to find the defendant not guilty.

The only witness to the slaying was Jarman. He said Woodruff came in his house and beat him with an iron poker. After the overseer shot at him and missed, Jarman got his shotgun and killed the white man. He fled following the shooting, but later surrendered to officers.

WHAT THE SUPREME COURT HAS DONE ON NEGRO CASES

By ATTY. SIDNEY A. JONES, JR., For A.N.P.

IV.—CIVIL RIGHTS AND SEGREGATION (Cont.)

In the civil rights cases of 1883, involving the Federal Civil Rights Act, one of the plaintiffs sought to recover a penalty against a railroad company for the refusal of a conductor to let her in the woman's car. The Supreme Court held Congress had no power to punish the individual acts of a railroad company in jim crowing a colored person. The inconsistency of the Supreme Court was clearly pointed out in a dissenting opinion by Justice Harlan, who said:

"The opinion in these cases proceeds, it seems to me, upon grounds entirely too narrow and artificial. I cannot resist the conclusion that the substance and spirit of the recent amendments of the Constitution have been sacrificed by a subtle and ingenious verbal criticism. It is not the words of the law but the internal sense that makes the law; the letter of the law is the body; the sense and reason of the law is the soul. Constitutional provisions adopted in the interest of liberty, and for the purpose of securing through national legislation, if need be, rights inhering in a state of freedom, and belonging to American citizenship, have been so construed as to defeat the ends the people desired to accomplish, which they attempted to accomplish, and which they supposed they had accomplished by changes in their fundamental law. By this I do not mean that the determination of these cases should have been materially controlled by considerations of mere expediency or policy. I mean only in the form, to express an earnest conviction that the Court has departed from the familiar rule requiring, in the interpretation of constitutional provisions, that full effect be given to the intent with which they were adopted." Justice Harlan further pointed out Congress passed the Fugitive Slave Law of 1793, establishing a mode for the recovery of fugitive slaves and prescribing a penalty against any person who knowingly hindered a master in recovering a slave. In Prigg v. Commonwealth, decided in 1842, (16 Pet. 539,) this Fugitive Slave Act was upheld by Supreme Court. The Attorney General of Pennsylvania in this case urged upon the Court that Congress could only punish state action in denying a master his slave and not individual action, but to this the Court turned a deaf ear and adjudged that primary legislation by Congress to enforce the master's right was authorized by the Constitution.

The constitutionality of the Fugitive Slave Act of 1850, rested, as did the Act of 1793, solely upon the implied power of Congress to enforce the master's rights. The Act of 1850 was much stronger than the one of 1793. It placed at the disposal of the masters seeking to recover a slave the whole power of the nation. It invested a commissioner, appointed under the act, with power to summon the posse comitatus for the enforcement of its provisions, and commanded all good citizens to assist in its prompt and efficient execution whenever their services were required as part of the posse comitatus. The Supreme Court in Ableman v. Booth (21 How. 506), 1859, Chief Justice Taney writing the opinion, adjudged it to be, "in all of its provisions fully authorized by the constitution of the United States." Justice Harlan continued:

"This Court has uniformly held that the national government has the power, whether expressly given or not, to secure and protect rights conferred or guaranteed by the Constitution, U. S. vs. Reese, U. S. 92, 214; Shauder vs. W. Va. 100 U. S. 303. That doctrine ought not now to be abandoned when the inquiry is not as to an implied power to protect the master's rights, but what may Congress, under powers expressly granted, do for the protection of freedom and the rights necessarily inhering in a state of freedom." Unfortunately for the Negro, none of the other justices of the court thought and felt like Justice Harlan.

Other cases dealing with jim crowism have been before the Supreme Court all to the detriment of the Negro. In the case of Plessy v. Ferguson, the Supreme Court in 1896 decided that the Louisiana statute which requires railway companies to provide equal but separate accommodations for white and colored passengers and made it a misdemeanor for any passenger to insist upon going into a coach reserved for persons of another race, was constitutional.

Thus it is seen here that the reconstruction statute of Louisiana prohibiting segregation by common carriers operating within the state was held unconstitutional by the Supreme Court in the case of Hall v. Decuir in 1877, yet a subsequent jim crow statute by the state of Louisiana with reference to common carriers was upheld by the Court in 1896. The Supreme Court also in 1889 upheld the Mississippi jim crow law dealing with common carriers in the case of Louisville, New Orleans and Texas Railway company v. Mississippi. The Court stated that it would construe the Mississippi statute as repecting commerce solely within the state and that obviously there was no violation of the commerce clause of the federal constitution.

This Mississippi statute which was upheld by the Supreme Court was very similar to the statute passed by the Recontruction government in Louisiana which was knocked out by the Court in Hall v. Ducuir. In that case the district court of Louisiana held that the statute was not a regulation of commerce among the states, and this decision was sustained by the Supreme Court of Louisiana, because the statute purported by its express words to control carriers within the state, yet the Chief Justice of the Supreme Court of the United States in beginning his opinion, for some strange reason stated, "For the purpose of this case we must treat the Act as requiring those engaged in interstate commerce to give all persons traveling in that state upon public conveyances employed in such business, equal rights and privileges in all parts of the conveyance without distinction or discrimination on account of race or color." The Louisiana court did not hold the statute regulated interstate commerce. It held just the opposite. Nevertheless the Supreme Court of the United States had to take this attitude in order to kill the statute and defeat the Negro. The Chief Justice of Louisiana in upholding the Act in his opinion said, "The act does not attempt to regulate commerce. It was enacted solely to protect the newly enfranchised citizens of the United States within the limits of Louisiana from the effects of prejudice against them."

Other "Jim Crow" Cases

Negroes have taken several other cases to the Supreme Court in an effort to defeat the jim crow coach law, but in every case the Supreme Court has found a way to deny any relief. This is true even though some of its opinions have been inconsistent and some directly contrary to previous decisions. In 1914 in the case of McCabe v. Atchison, Topeka and Santa Fe Railway company, the Supreme Court held that the Oklahoma statute requiring separate but equal accommodations for white and African races, must in the absence of a different construction by the state court be construed as applying to exclusively interstate commerce, and as so construed it does not contravene the commerce clause of the United States Constitution. However, the Supreme Court did hold that the law did discriminate against colored persons in permitting carriers to provide sleeping cars, dining cars, and chair cars to be used exclusively by the white persons and hence did violate the Fourteenth Amendment even though there was a limitd demand for such accommodations by the colored race as compared with the white race.

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The opinion written by Justice Hughes who is at the present time the Chief Justice, did hold that although the Supreme Court would uphold the separate coach law it would not uphold a proper case brought before it that part of the law which excluded Negroes altogether from sleeping cars, dining cars, and chair cars. In 1900 the Supreme Court in the case of Chesapeake and Ohio Railway Company v. Kentucky upheld the Kentucky jim crow coach law, even though the railroad was operated in interstate commerce from Virginia to Kentucky.

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In a very recent case of South Covington and Cincinnati Street Railway company v. Kentucky, the Supreme Court again upheld a jim crow law. In this case a street railway company was indicted for violating a Kentucky law which required railways in the state to furnish separate coaches for white and colored passengers. The car in question was an ordinary street car solely engaged in interstate trips from Cincinnati to Covington, and 80 per cent of the passengers were interstate. Nevertheless the Supreme Court upheld the law. It is interesting to note that the nature of this identical railway was considered a few years prior by the Court and it was held that traffic between Kentucky and Ohio on the same cars under the same management constituted interstate commerce, and that the ordinance of Covington, which undertook to determine the number of cars and passengers to be carried was invalid.

(To be Continued)

Court Decisions, Affecting the Negro - 1937

SUPREME COURT AND THE NEGRO

Famous Berea College Fined $1,000—Made to Close Doors to Negroes in Case Upheld by United States Supreme Court

Amsterdam News 4-24-37
New York, N.Y.

Sidney A. Jones, Jr.

writer of this series of articles on the Supreme Court and the Negro, of which this is the sixth and final, is a well-known Chicago attorney. In view of the present national interest and bitter debate on President Roosevelt's proposal to augment the nation's highest tribunal, this survey, written for the Associated Negro Press and The Amsterdam News, and containing facts known to very few people, assumes unusual significance.

(Continued from Last Week.)

Peonage was given a severe blow by the Supreme Court in the case of Bailey vs. Alabama, decided in 1911 (219 U. S. 219). The court for the first time gave real effect to the Thirteenth Amendment by holding the Alabama peonage law invalid. This law attempted to make the violation of a contract for personal services a penal offense.

The court held that a state cannot compel one man to labor for another in payment of a debt by punishing him as a criminal if he does not perform the service or pay the debt. The state of Alabama later tried to evade an act of Congress prohibiting slavery, but was prevented by the Supreme Court in United States vs. Reynolds in 1914 (235 U. S. 133).

Practically all cases where the Negro has been helped by the Supreme Court arose from discriminations against him by some of the Southern states. The Supreme Court has prevented much mistreatment of the Negro by the Southern states, but it has also sanctioned much discrimination, including separate schools, jim-crow laws, disfranchisement by white primaries and other methods.

The Supreme Court has never saved the Negro from an act of Congress aimed at denying him any rights. On the other hand, the Supreme Court has, in six decided cases, declared acts of Congress unconstitutional which had as their sole purpose the protection of Negroes' rights, privileges and immunities.

The Court and Schools

All of the Southern states by law require separate schools for white and colored people. As a result of this segregation, the colored schools are vastly inferior to the white schools and in some cases there are no colored schools at all.

In some communities there are high schools for whites and none for Negroes, and no Southern state provides professional education for Negroes, such as law, medicine, dentistry, pharmacy and the like, nor does any Southern state provide facilities for Negroes to earn degrees in graduate study. However, Negroes have never willingly submitted to this rank discrimination. They have fought up to the Supreme Court of the United States, but they have received no relief.

Negro High Schools

A typical example of how Southern states discriminate against Negroes in the matter of education, taxing Negroes to support all schools, and then giving them unequal facilities, is brought out in a case decided by the Supreme Court in 1889, Cumings vs. Board of Education. In this case an elementary school for Negroes was provided by a Georgia city, whereas it provided an elementary and high school for the whites.

Certain Negroes filed a petition to enjoin the Tax Board from collecting a tax for the high school, on the ground that there was no high school for Negroes and therefore there should be no taxes collected for a white high school.

When the case reached the U. S. Supreme Court it was held that the relief asked for would not be granted. The Board of Education justified its refusal to provide a Negro high school on the ground that there were only sixty Negroes who wanted to attend high school, and that if they provided a Negro high school they would have to close the elementary school, which accommodated 300 children.

The Supreme Court refused to grant the relief prayed for because it either would impair the efficiency of the high school provided for white children, or compel the board to close it, and if that were done the result would be to take from the white children educational facilities belonging to them without giving to colored children additional opportunities for the education furnished in high schools.

The court said, however, that if in some appropriate proceeding Negroes had sought directly to compel the Board of Education, out of the funds in its hands, or under its control, to establish and maintain a high school for colored children, "and if it appeared that the board's refusal to maintain such a school was in fact an abuse of its discretion and in hostility to the colored population because of their race, different questions might have arisen."

In 1927, in the case of Gong Lum vs. Rice, the Supreme Court decided that a child of Chinese blood, born in and a citizen of the United States, is not denied the equal protection of the laws by being classed by the state of Mississippi among the colored races who are assigned to public schools separate from those assigned to whites when equal facilities for education are afforded both classes.

The Supreme Court has also upheld the right of a state to prohibit a private school from educating white and colored children together. This was decided in the case of Berea College vs. Commonwealth, in 1908. The college, a private corporation of Kentucky, was indicted and charged that it did permit and receive both white and Negro races as pupils for instruction in said college contrary to an act of Kentucky of March 22, 1904, entitled "An act to prohibit white and colored persons from attending the same school."

Berea College Fined

The college was found guilty and sentenced to pay a fine of $1,000. The Supreme Court held that the statute was valid as to corporations, although if it involved an individual it may be in conflict with the Federal Constitution in denying to individuals power which they might rightfully exercise. Yet, the Supreme Court had previously held in many cases that the term "person" in the Fourteenth Amendment applies to corporations as well as to individuals, but it did not follow that rule in this case.

The charter granted to the college in 1899, five years before the passage of the state statute, provided: "Its object is the education of all persons who may attend its institutions of learning at Berea, and, in the language of the original articles, to promote the cause of Christ."

Justice Harlan, who had always been a friend of the Negro while on the court, handed down a vigorous dissenting opinion condemning the Kentucky law. He said:

Harlan's Dissent Vigorous.

"The capacity to impart instruction to others is given by the Almighty for beneficent purposes; and its use may not be forbidden or interfered with by government—certainly not, unless instruction is, in its nature, harmful to public morals or imperils the public safety. The right to impart instruction, harmless in itself or beneficial to those who receive it, is a substantial right of property, especially where the services are for compensation.

"But even if such right be not strictly a property right, it is, beyond question, part of one's liberty guaranteed against hostile state action by the Constitution of the United States. This court has more than once said that the liberty guaranteed by the Fourteenth Amendment embraces 'the right of the citizen to be free in the enjoyment of all his faculties,' and 'to be free to use them in all lawful ways.'"

Justice Harlan further pointed out that if a state could forbid the teaching of two races together it could prevent their worshipping together or meeting together politically, or even shopping at the same time in the same store.

Residential Segregation

The Supreme Court put an end to the attempt of Southern cities and states to assign Negroes to the ghettoes by declaring unconstitutional an ordinance of the city of Louisville. This was decided in 1917, in the case of Buchanon vs. Marley. A Negro had agreed to buy a lot from a white man. The lot was located in a block where there were eight residences occupied by whites and only two by colored. The ordinance prevented the occupancy of a Negro on a lot in the city in any block where the greater number of residences are occupied by whites.

The Supreme Court declared that the city ordinance was unconstitutional and violated the Fourteenth Amendment. Property includes the right to use and dispose of it, and the occupancy and sale of property cannot be inhibited by the states or any of their municipalities solely because of the color of the proposed occupant, said the court.

Even the Supreme Court of Georgia, in the case of Carey vs. Atlanta (143 Ga. 192), held a similar racial segregation ordinance invalid.

Allowed D. C. Covenants.

The Supreme Court, however, has upheld the right of property owners in the District of Columbia to make valid agreements to the effect that no property owned by them should be sold, occupied, leased, or given to any Negro. The owners make mutual conevants with each other and the covenants run with the land, so that any person securing the land from one of the contracting parties will take it subject to this burden or restriction against selling, giving, or leasing it to Negroes.

One of the parties to this covenant agreed to sell land included in the covenant to a Negro and one of the other parties to the covenant brought a suit to enjoin the conveyance. The injunction was granted and the matter affirmed by the Court of Appeals of the District of Columbia.

On appeal to the U. S. Supreme Court the case was dismissed on the ground that no constitutional question was raised. The court said that neither of the amendments to the Constitution prohibited private individuals from entering into contracts respecting the control and disposition of their own property.

THE END

Court Decisions, Affecting the Negro - 1937

What The U. S. Supreme Court Has Done On Negro Cases

By ATT. SIDNEY A. JONES, Jr.
(For ANP)

4-3-37

V. JURY SERVICE AND DUE PROCESS OF LAW

It is well known that few of the eight million Negroes of the South ever get a chance to serve on a jury, and that Negroes, therefore, in being tried for criminal offenses do not have the advantages that would otherwise be theirs. This is especially a handicap in cases involving offenses against persons of other races. It is also a distinct disadvantage in the trial of civil cases where one party is white and the other colored. If the jury is all white, and the Negro has no opportunity to have members of his race among them, it is easy to see that he will be at distinct disadvantage. Why is it true, then, that even though in some of the Southern states Negroes comprise from one half to one fourth of the population, and in some counties Negroes actually outnumber the whites, Negroes very rarely are called upon to take part in the administration of justice by serving on a jury? What has the Supreme Court said about this?

Since 1879 the Supreme Court has constantly held that the right to serve on juries cannot be denied any person because of race. In that year in the case of Ex Parte Virginia, it was held that section four of the Civil Rights Bill passed by Congress in 1875 was valid, and that an indictment against a state officer under this section for excluding persons from the jury list on account of their color would be sustained.

This question of Negroes serving on juries is usually raised when a Negro is convicted in a state court and appeals his conviction to the U. S. Supreme Court on the ground that he was denied due process of law and the equal protection of the laws as guaranteed by the 14th Amendment. That is the provision that saved the nine Scottsboro Alabama boys in the second appeal to the Supreme Court, in the case of Norris vs. Alabama, decided April, 1935. It was conclusively proved at the trial in Alabama that Negroes were not called to jury service and had not been for a large number of years, even though there were many Negroes in the county qualified to serve as jurors.

The precedent for the Scottsboro cases, however, was laid down in 1880 by the Supreme Court in the famous case of Neal vs. Delaware. In this case William Neal, a Negro, was indicted and convicted for rape and sentenced to death. The constitution of Maryland at that time contained a provision excluding Negroes from jury service. The Court held that the exclusion because of their race and color of citizens of African descent from the grand jury was a violation of the prisoner's constitutional rights, which the trial court was bound to redress and the remedy for any failure on the part of the trial court in that respect is in the Supreme Court, and the conviction of the defendant by such a jury will be reversed by the Supreme Court. This rule has been consistently followed in saving Negroes from conviction in Southern courts.

A similar case was Carter vs. Texas 177 U. S. 442 (1900). Seth Carter a Negro, was indicted for murder and moved to have indictment quashed on ground that Negroes were illegally excluded from the grand jury. The court refused to hear any evidence on the motion and the motion was denied and defendant convicted. The defendant appealed to the U. S. Supreme Court where the judgment was reversed and the court repeated the established rule:

"Whenever by any action of the state, whether through its legislature through its courts or through executive or administrative offices, all persons of the African race are excluded solely because of their race or color from serving as grand jurors in the criminal prosecution of a person of the African race, the equal protection of the laws is denied to him, contrary to the 14th Amendment of the Constitution of the United States."

However, the Supreme Court restricts the above mentioned rule to its narrowest terms. The Court held in 1879 in the case of Virginia vs. Rives that a person of one race cannot demand as a matter right that juries to try a cause in which he is a party shall be composed in whole or in part of members of his race. That is to say, the Supreme Court will not reverse a conviction of a Negro merely because no Negro sat on the jury. A conviction wil lonly be reversed when it can be shown that Negroes are systematically excluded from the right to be called for jury service in the particular county where the trial took place.

The case of Virginia vs. Rives involved two colored boys who were indicted for the murder of a white man. When the case was called for trial the defendants made a motion that the court modify the venire, which was composed entirely of the white race, so as to allow one-third thereof to be composed of colored men. The motion was overruled on the ground that the venire had been drawn according to law. Section 641 of the revised statutes of the United States provided for the removal of a case to the United States courts if a party could not get his constitutional rights in the state courts. On a habeas corpus petition the colored defendants were taken from the county jail and delivered to the United States marshal. When the case reached the U. S. Supreme court this court held against the Negroes and ordered that they be redelivered to Virginia, on the ground that the laws of Virginia did not exclude Negroes from jury service, and that if they were excluded it was individual action on the part of the officials in charge of the jury, and not state action.

The Court further said: "A mixed jury in a particular case is not essential to the equal protection of the law. It is a right to which any colored man is entitled, that in the selection of jurors to pass upon his life liberty or property, there shall be no exclusiaon of his race, and no discrimination against them because of his color. But he has no right to have the jury composed partly of colored men."

Again in 1879 the Supreme Court handed down another famous decision upholding the rights of Negroes to serve on juries. This was the case of Strauder vs. West Virginia in which a colored man was indicted for murder. Before the trial commenced in the state court, the defendant presented a petition praying for a removal of his case to the circuit court of the United States because by virtue of the laws of West Virginia no Negro could serve on the jury. The petition was based on a federal law providing for the removal of a case from the state court to the federal court if a defendant could not get his constitutional rights in the former.

The petition was denied and the defendant was convicted in the state court. On appeal to the U. S. Supreme Court the conviction was reversed and the cause ordered transferred to the federal court. The Supreme Court said: "The right to a trial by jury is guaranteed to every citizen of West Virginia by the constitution of the state, and the constitution of juries is a very essential part of the protection such a mode of trial is intended to secure. The very idea of a jury is a body of men composed of the peers or equals of the persons whose rights it is selected to determine; that is, of his neighbors, fellows, associates, persons having the same legal status in society as that which he holds."

In Gibson vs. Mississippi (162 U. S. 565) 1896, the Supreme Court practically nullified the effect of the removal statute as construed in Strauder vs. West Virginia. A Negro defendant in an indictment filed a petition asking the cause to be removed to U. S. circuit court under Section 641 of U. S. statutes, which provided for removal if defendant could not secure his rights under U. S. Constitution. Teh petition stated that in the county 7,000 colored citizens were competent for jury servise and 1,500 whites. Yet there had not been for a number of years any colored men summoned for jury service and that Negroes were excluded on account of race and color. The petition for removal was denied by the Mississippi court and the defendant convicted

What the Supreme Court Has Done to the Negro

SIDNEY A. JONES, Jr., Attorney

IV.—CIVIL RIGHTS AND SEGREGATION

(Continued)

Other "Jim Crow" Cases

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V. JURY SERVICE AND DUE PROCESS OF LAW

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The precedent for the Scottsboro cases, however, was laid down in 1880 by the Supreme Court in the famous case of Neal vs. Delaware. In this case William Neal, a Negro, was indicted and convicted for rape and sentenced to death. The constitution of Maryland at that time contained a provision excluding Negroes from jury service. The Court held that the exclusion because of their race and color of citizens of African descent from the grand jury was a violation of the prisoner's constitutional rights, which the trial court was bound to redress and the remedy for any failure on the part of the trial court in that respect is in the Supreme Court, and the conviction of the defendant by such a jury will be reversed by the Supreme Court. This rule has been consistently followed in saving Negroes from conviction in Southern courts.

A similar case was Carter vs. Texas 177 U. S. 442 (1900). Seth Carter Why a Negro, was indicted for murder and moved to have indictment quashed on ground that Negroes were illegally excluded from the grand jury. The court refused to hear any evidence on the motion and the motion was denied and defendant convicted. The defendant appealed to the U. S. Supreme Court where the judgment was reversed and the court repeated the established rule:

"Whenever by any action of the state, whether through its legislature through its courts or through executive or administrative offices, all persons of the African race are excluded solely because of their race or color from serving as grand jurors in the criminal prosecution of a person of the African race, the equal protection of the laws is denied to him, contrary to the 14th Amendment of the Constitution of the United States."

However, the Supreme Court restricts the above mentioned rule to its narrowest terms. The Court held in 1879 in the case of Virginia vs. Rives that a person of one race cannot demand as a matter right that juries try a cause in which he is a party shall be composed in whole or in part of members of his race. That is to say, the Supreme Court will not reverse a conviction of a Negro merely because no Negro sat on the jury. A conviction wil lonly be reversed when it can be shown that Negroes are systematically excluded from the right to be called for jury service in the particular county where the trial took place.

The case of Virginia vs. Rives involved two colored boys who were indicted for the murder of a white man. When the case was called for trial the defendants made a motion that the court modify the venire, which was composed entirely of the white race. so as to allow one-third thereof to be composed of colored men. The motion was overruled on the ground that the venire had been drawn according to law. Section 641 of the revised statutes of the United States provided for the removal of a case to the United States courts if a party could not get his constitutional rights in the state courts. On a habeas corpus petition the colored defendants were taken from the county jail and delivered to the United States marshal: When the case reached the U. S. Supreme court this court held against the Negroes and ordered that they be redelivered to Virginia, on the ground that the laws of Virginia did not exclude Negroes from jury service, and that if they were excluded it was in-dividual action on the part of the officials in charge of the jury, and not state action.

The Court further said: "A mixed jury in a particular case is not essential to the equal protection of the law. It is a right to which any colored man is entitled, that in the selection of jurors to pass upon his life liberty or property, there shall be no exclusiaon of his race, and no discrimination against them because of his color. But he has no right to have the jury composed partly of colored men."

Again in 1879 the Supreme Court handed down another famous decision upholding the rights of Negroes to serve on juries. This was the case of Strauder vs. West Virginia in which a colored man was indicted for murder. Before the trial commenced in the state court, the defendant presented a petition praying for a removal of his case to the circuit court of the United States because by virtue of the laws of West Virginia no Negro could serve on the jury. The petition was based on a federal law providing for the removal of a case from the state court to the federal court if a defendant could not get his constitutional rights in the former.

The petition was denied and the defendant was convicted in the state court. On appeal to the U. S. Supreme Court the conviction was reversed and the cause ordered transferred to the federal court. The Supreme Court said: "The right to a trial by jury is guaranteed to every citizen of West Virginia by the constitution of the state, and the constitution of juries is a very essential part of the protection such a mode of trial is intended to secure. The very idea of a jury is a body of men composed of the peers or equals of the persons whose rights it is selected to determine; that is, of his neighbors, fellows, associates, persons having the same legal status in society as that which he holds."

In Gibson vs. Mississippi (162 U. S 565) 1896, the Supreme Court practically nullified the effect of the removal statute as construed in Strauder vs. West Virginia. A Negro defendant in an indictment filed a petition asking the cause to be removed to U. S. circuit court under Section 641 of U. S. statutes, which provided for removal if defendant could not secure his rights under U. S. Constitution Teh petition stated that in the county 7,000 colored citizens were competent for jury servise and 1,500 whites. Yet there had not been for a number of years any colored men summoned for jury service and that Negroes were excluded on account of race and color. The petition for removal was denied by the Mississippi court and the defendant convicted.

What the Supreme Court Has Done to the Negro

SIDNEY A. JONES, Jr., Attorney

1V.—CIVIL RIGHTS AND SEGREGATION

(Continued)

Other "Jim Crow" Cases

Negroes have taken several other cases to the Supreme Court in an effort to defeat the jim-crow coach law, but in every case the Supreme Court has found a way to deny any relief. This is true even though some of its opinions have been inconsistent and some directly contrary to previous decisions. In 1914 in the case of McCabe v. Atchison, Topeka and Santa Fe Railway Company, the Supreme Court held that the Oklahoma statute requiring separate but equal accommodations for white and African races, must in the absence of a different construction by the state court be construed as applying to exclusively interstate commerce, and as so construed it does not contravene the commerce cause of the United States Constitution.

However, the Supreme Court did hold that the law did discriminate against colored persons in permitting carriers to provide sleeping cars, dining cars, and chair cars to be used exclusively by the white persons and hence did violate the Fourteenth Amendment even though there was a limited demand for such accommodation by the colored race as compared with the white race.

However, in the action brought by five Negroes to enjoin the enforcement of the law, the Supreme Court denied relief holding that the allegations in the bill were too vague and that none of the complainants had been refused accommodations.

The opinion written by Justice Hughes who is at the present time Chief Justice, did hold that although the Supreme Court would uphold the separate coach law it would not uphold a proper case brought before it that part of the law which excluded Negroes altogether from sleeping cars, dining cars, and chair cars. In 1900 the Supreme Court in the case of Chesapeake and Ohio Railway Company v. Kentucky upheld the Kentucky jim-crow coach law, even though the railroad was operated in interstate commerce from Virginia to Kentucky.

Again in 1910 in the case of Childs v. Chesapeake and Ohio Railway Company the Supreme Court denied relief to a Negro who was thrown out of a coach of a train into a jim-crow car, on the ground that the act of the defen-

at distinct disadvantage. Why is it true, then, that even though in some of the Southern states Negroes comprise from one half to one-fourth of the population, and in some counties Negroes actually outnumber the whites, Negroes very rarely are called upon to take part in the administration of justice by serving on a jury? What has the Supreme Court said about this?

Since 1879 the Supreme Court has consistently held that the right to serve on juries cannot be denied any person because of race. In that year in the case of Ex Parte Virginia, it was held that section four of the Civil Rights Bill passed by Congress in 1875 was valid, and that an indictment against a state officer under this section for excluding persons from the jury list on account of their color would be sustained.

This question of Negroes serving on juries is usually raised when a Negro is convicted in a state court and appeals his conviction to the U. S. Supreme Court on the ground that he was denied due process of law and the equal protection of the laws as guaranteed by the Fourteenth Amendment. That is the provision that saved the nine Scottsboro Alabama boys in the second appeal to the Supreme Court, in the case of Norris v. Alabama, decided April, 1935. It was conclusively proved at the trial in Alabama, that Negroes were not called to jury service and had not been for a large number of years, even though there were many Negroes in the county qualified to serve as jurors.

PRECEDENTS

The precedent for the Scottsboro cases, however, was laid down in 1880 by the Supreme Court in the famous case of Neal v. Delaware. In this case William Neal, a Negro, was indicted and convicted for rape and sentenced to death. The constitution of Maryland at that time contained a provision excluding Negroes from jury service.

National Negro Congress Begins Fight Against the U. S. Supreme Court

Says Court Defeats Negro Rights

Negro organizations of every type were urged this week to support President Roosevelt's proposals for modernization of the United States Supreme Court by John P. Davis, secretary of the National Negro Congress. The request was made in a four-page folder issued by the congress which declared that "every major citizenship right granted Negroes by the 14th and 15th Amendments to the constitution has been ignored by the Supreme Court."

Davis also indicated that local councils of the organization in 25 key cities had begun a campaign to support Labor's Non-Partisan League in its efforts to reform the High Court.

"A great many people," declared the Congress secretary, "are saying that the Supreme Court has protected the Negro people. But the facts are that the Supreme Court has for the past 60 years used every possible method to defeat the rights given us by the 13th, 14th and 15th Amendments to the Constitution.

Cites Record of Court

"The record of the court indicates that on every major issue involving Negroes and labor it has adopted a reactionary position. It has refused to allow Congress to enforce the amendments by a civil rights law. But it has permitted states to adopt all manner of jim-crow laws against us.

"The court has refused to approve legislation to guarantee Negroes the right to vote, but it has permitted political parties to set up bars in primary elections which effectively prevent three million Negro citizens from voting."

Scores Negro Hating Justices

"No better example of the attitude which the Supreme Court takes towards Negroes," declared Davis, "exists than the recent explosion of Mr. Justice McReynolds who publicly insulted the Negro people in a recent speech in defense of the court."

Davis indicated that an initial 50,000 folders giving the complete record of the court had been distributed. He predicted that Negro voters in key states in the mid-West and East would be a deciding factor in securing the votes of Senators and Representatives in support of President Roosevelt's modernization plan.

The issue of modernizing the Supreme Court is one of vital importance to Negroes, he stated. "Only thru the speedy method proposed by President Roosevelt," he said "can we hope to end the intolerable situation whereby every law which aids the unemployed or which guarantees better protection to Negroes is declared unconstitutional by the court."

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